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**2509 South Fourth Operating, LLC d/b/a St. Monica Center for Rehabilitation & Healthcare and National Union of Hospital and Healthcare Employees, AFSCME AFL-CIO, and its affiliate District 1199c.** Case 04–CA–264458

May 5, 2021

**DECISION AND ORDER**

BY MEMBERS KAPLAN, EMANUEL, AND RING

The Acting General Counsel seeks a default judgment in this case on the ground that 2509 South Fourth Operating, LLC d/b/a St. Monica Center for Rehabilitation & Healthcare (the Respondent) has failed to file a timely answer to the complaint. Upon a charge filed by National Union of Hospital and Healthcare Employees, AFSCME, AFL-CIO and its Affiliate District 1199C (the Union) on August 11, 2020, the Acting General Counsel issued a complaint and notice of hearing on February 22, 2021<sup>1</sup> against the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. Although properly served copies of the charge and complaint, the Respondent failed to file a timely answer.

On March 26, the Acting General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on March 29, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. A response to the notice was due on or before April 12. On April 5, the Respondent filed an untimely answer to the complaint with the Region. The Respondent did not file a response to the Acting General Counsel’s Motion for Default Judgment or to the Board’s Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Default Judgment**

Section 102.20 of the Board’s Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by March 8, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the Acting General Counsel’s motion disclose that the Region, by letter dated March 10, advised the Respondent that unless an answer was received by

March 17, a motion for default judgment would be filed. Notwithstanding the March 10 reminder letter, the Respondent failed to file an answer until April 5, after the Acting General Counsel had filed the Motion for Default Judgment.

We note that the Respondent did not file a request for an extension of time to file an answer by the March 8 or March 17 deadlines, and has offered no explanation for its failure to do so. Such failure to promptly request an extension of time for filing is a factor demonstrating a lack of good cause. See, e.g., *V. Garofalo Carting*, 362 NLRB 1369, 1369 (2015); *Day & Zimmerman Services*, 325 NLRB 1046, 1047 (1998).

Further, the Respondent’s April 5 answer provided no reason or good cause for its untimeliness. The Respondent failed to comply with the express instructions for late-filed documents set forth in Section 102.2(d)(2) of the Board’s Rules and Regulations. That is, it did not file “a motion that states the grounds relied on for requesting permission to file untimely,” accompanied by an affidavit containing the facts relied on to support the motion. In *Elevator Constructors Local 2 (Unitec Elevator Services Co.)*, 337 NLRB 426, 428 (2002), the Board stated that in all matters arising under the excusable-neglect provision of Section 102.111(c), a precursor to Section 102.2(d)(2), “we will strictly adhere to our rule that the specific facts relied on to support the motion to accept a late filing shall be set forth in affidavit form and sworn to by individuals with personal knowledge of the facts.” Here, the Respondent did not file such a motion, nor did it submit a supporting affidavit. Thus, the Respondent did not comply with the requirements of Section 102.2(d)(2), and has failed to show good cause for filing an untimely answer.

In the absence of good cause being shown for the failure to file a timely answer, we reject the answer filed on April 5 as untimely, and we deem the factual allegations in the complaint to be admitted as true.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a Pennsylvania limited liability company, has operated a rehabilitative and nursing care facility located at 2509 South 4th Street, Philadelphia, Pennsylvania (the Center).

During the past year, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$100,000 and purchased and received goods valued in excess of \$5,000 directly from points outside the Commonwealth of Pennsylvania.

<sup>1</sup> All dates refer to 2021 unless otherwise indicated.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a healthcare institution within the meaning of Section 2(14) of the Act. We find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Jeffrey Cox	Administrator
Danielle Parkinson	Executive Secretary

At all material times, Charles-Edouard Gros has been the owner of the Respondent and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent at the Center (the units) constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

### *Service and Maintenance Unit:*

All full-time and regularly scheduled part-time (who regularly work fifteen (15) hours or more per week) service and maintenance employees, including certified nurse aides, recreation leader, food service worker, cooks, environmental service aides, plant operation technicians, linen aides, Floor technician, Prep Cook, Dishwasher, and unit clerks, excluding all other employees, professional employees and technical employees, including but not limited to registered nurses, LPNs, LGPNs, occupational therapists, recreation therapists, office clerical employees, guards, supervisors, confidential, executive and managerial employees, temporary and casual employees and per diems as defined in the Act.

### *LPN Unit:*

All full-time and regular part-time and pool Licensed Practical Nurses who work eight (8) or more hours per week employed by the Respondent at the Center, excluding all other employees, including the Director of Nursing, Administrators, Assistant Administrators, Assistant Director of Nursing, Department Heads, Unit Managers, Assistant Unit Managers, RNs, Director of Patient Services, Treatment Nurse, temporary and casual

employees, service and maintenance employees, guards and supervisors as defined in the Act.

Since at least 2014, and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit employees. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from November 3, 2019 to November 2, 2023.

At all material times since at least 2014, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

About May 28, 2020, the Union, by email to Jeffrey Cox, requested that the Respondent furnish it with the following information:

1. An electronic sortable excel spreadsheet for each bargaining unit which lists for each bargaining unit [e]mployee: name, job classification, seniority, full-time or part-time or other status, number of hours regularly scheduled and worked per week, selected Healthcare Plan (or waiver of), coverage level, Healthcare Plan contribution per week or biweekly or other period basis, and their Healthcare Plan contribution deduction or "waiver" payment in the payrolls paid to the Employee since May 4 to date.
2. The full monthly premium cost of each Healthcare Plan and their coverage levels.
3. The beginning and ending dates of the payroll periods starting with the first full payroll period beginning in May to date and their payment dates.

About June 3, 2020, the Union, by telephone call to Jeffrey Cox, reaffirmed its request for the information described above.

About June 10, 2020, the Union, by email to Jeffrey Cox and Danielle Parkinson, reaffirmed its request for the information described above.

About June 12, 2020, the Union, by email to Jeffrey Cox, reaffirmed its request for the information described above.

About June 29, 2020, the Union, by email to Jeffrey Cox and Danielle Parkinson, reaffirmed its request for the information described above.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

From about May 28, 2020 to about January 28, 2021, the Respondent unreasonably delayed in furnishing the

Union with the following information described above for each employee in the units: name, job classification, seniority, full-time or part-time or other status, and number of hours regularly scheduled per week.

Since about May 28, 2020, the Respondent has failed and refused to provide the Union with the remainder of the requested information described above in paragraph 1 and all of the information described above in paragraphs 2 and 3.

About June 12, 2020, the Union, by email to Jeffrey Cox and Danielle Parkinson, requested that the Respondent furnish it with the following information:

1. Name and job classification for each bargaining unit employee
2. Seniority date for each bargaining unit employee
3. Full-time, part-time, or other status for each bargaining unit employee
4. Number of hours regularly scheduled for each bargaining unit employee
5. Number of hours worked per pay period for each bargaining unit employee for each full payroll period from April 15, 2020 through the last full payroll period that ended prior to June 8, 2020
6. Selected Healthcare Plan (or waiver of) for each bargaining unit employee
7. Coverage level for each bargaining unit employee
8. Indicate loss of health insurance or waiver eligibility during the requested payroll period history for each bargaining unit employee.

About June 29, 2020, the Union, by email to Jeffrey Cox and Danielle Parkinson, reaffirmed its request for the information described above.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

From about June 12, 2020 to about January 28, 2021, the Respondent unreasonably delayed in furnishing the Union with the information requested by it as described above in paragraphs 1 through 4.

Since about June 12, 2020, the Respondent has failed and refused to provide the Union with the information requested by it as described above in paragraphs 5 through 8.

About June 12, 2020, the Union, by email to Jeffrey Cox and Danielle Parkinson, requested that the Respondent furnish it with the following information:

1. The terms and conditions of the Hazard Pay, including the pay rate(s) and employee eligibility
2. The implementation date and start date and time of the Hazard Pay

3. The ending date and time of the payment of the Hazard Pay

4. A list of the bargaining unit members who received the Hazard Pay, including their job classification, their FTE, their regular rate of pay, and their rate of Hazard Pay.

About June 29, 2020, the Union, by email to Jeffrey Cox and Danielle Parkinson, reaffirmed its request for the information described above.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

Since about June 12, 2020, the Respondent has failed and refused to provide the Union with the information requested by it as described above.

About July 23, 2020, the Union, by email to Jeffrey Cox and Danielle Parkinson, requested that the Respondent furnish it with the following information:

1. "[t]he submission date (or the Employer's anticipated submission date)" for an application for a Pennsylvania Covid-19 relief grant, and the amount of the grant request; or
2. "[t]he reason the Employer is not applying for the grant. Please include [] any specific disqualifying factors or other reasons."

About July 28, 2020, the Union, by email to Jeffrey Cox, Danielle Parkinson, and Charles-Edouard Gros, reaffirmed its request for the information described above.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

From about July 23, 2020 to about January 28, 2021, the Respondent unreasonably delayed in furnishing the Union with the information requested by it as described above.

About June 29, 2020, by email to Jeffrey Cox, the Union requested to meet with the Respondent concerning workplace health and safety of the unit employees.

From about June 29, 2020 to about February 4, 2021, the Respondent refused the Union's request as described above.

#### CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish, or by unreasonably delaying in furnishing, the Union with requested information that is necessary and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information it requested on May 28, June 12, and July 23, 2020, to the extent that it has not already done so. In addition, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to timely respond to the Union's request to meet concerning workplace health and safety of the unit employees, we shall order the Respondent, on request, to meet with the Union concerning such issues.

## ORDER

The National Labor Relations Board orders that the Respondent, 2509 South Fourth Operating, LLC d/b/a St. Monica Center for Rehabilitation & Healthcare, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns shall

## 1. Cease and desist from

(a) Refusing to bargain collectively with National Union of Hospital and Healthcare Employees, AFSCME, AFL-CIO and its Affiliate District 1199C (the Union) by failing and refusing to furnish, or by unreasonably delaying in furnishing, it with requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

(b) Refusing to bargain collectively with the Union by failing and refusing to timely respond to the Union's request to meet concerning workplace health and safety of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

## 2. Take the following affirmative action necessary to effectuate the policies of the Act.

<sup>2</sup> If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting

(a) Furnish to the Union in a timely manner the information requested by the Union on May 28, June 12, and July 23, 2020, to the extent that it has not already done so.

(b) On request, meet with the Union concerning workplace health and safety of the unit employees.

(c) Post at its Philadelphia, Pennsylvania facility copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 28, 2020.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 5, 2021

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

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John F. Ring, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with National Union of Hospital and Healthcare Employees, AFSCME, AFL–CIO and its Affiliate District 1199C (the Union) by failing and refusing to furnish, or by unreasonably delaying in furnishing, it with requested information that is relevant and necessary to the Union’s performance of its functions as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT refuse to bargain collectively with the Union by failing and refusing to timely respond to the Union’s request to meet concerning workplace health and safety of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL furnish to the Union in a timely manner the information requested by the Union on May 28, June 12, and July 23, 2020, to the extent that we have not already done so.

WE WILL, on request, meet with the Union concerning workplace health and safety of our unit employees.

2509 SOUTH FOURTH OPERATING, LLC D/B/A ST.  
MONICA CENTER FOR REHABILITATION &  
HEALTHCARE

The Board’s decision can be found at [www.nlrb.gov/case/04-CA-264458](http://www.nlrb.gov/case/04-CA-264458) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

